IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No.770 of 2003 alongwith CWPs No.765, 767 to 769, 771 to 773 and 1014 to 1016 of 2003,

All reserved on
except CWP No.765 of 2003: 25.4.2007

CWP No.765 of 2003
Reserved on : 26.4.2007

Date of Decision: : 31.7.2007

CWP No.770 of 2003		
Nasib Chand & another	vs.	State of H.P. and others
CWP No.765 of 2003		
Mangat Ram & another	vs.	State of H.P. and others
CWP No.767 of 2003		
Nasib Devi & others	vs.	State of H.P. and others
CWP No. 768 of 2003		
Jagdev	vs.	State of H.P. and others
CWP No.769 of 2003		
Piare Lal	vs.	State of H.P. and others
CWP No. 771 of 2003		
Roshan Lal and another	vs.	State of H.P. and others
CWP No.772 of 2003		
Dharma Singh and another	vs.	State of H.P. and others
CWP No. 773 of 2003		
Kishan Singh and others	vs.	State of H.P. and others
CWP No. 1014 of 2003		
Nasib Singh and others	vs.	State of H.P. and others
CWP No.1015 of 2003		
Bhola Nath and others	vs.	State of H.P. and others
CWP No. 1016 of 2003		
Shakti Chand and others	vs.	State of H.P. and others

Coram
The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

In all the writ petitions

For the petitioners: Mr.R.P.Singh, Advocate.
For the respondents: Mr.C.B.Singh, Dy. Advocate General for respondent No.1
Mr.Anand Sharma, Advocate, for respondents No.2&3.

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

Sanjay Karol, J.

By this common judgment, all the above writ petitions are being heard and decided together as the facts in all the writ petition are similar and the question of law is identical.

Present writ petitions raise an important and substantial issue with regard to the entitlement of the compensation payable by the State to the land owners exercising their rights under Section 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as the Act).

The State of Himachal Pradesh vide single Notification dated 20th October, 1984 acquired certain pieces of land, including that of the petitioners, situated in Village Tabba, Tehsil and District Una, HP, for construction of B.G. Railway line from Nangal Dam to Talwara. The Land Acquisition Collector announced the award on 15th May, 1986 and fixed the market value of different kinds of land as under:-

(a) Barani and Abadi	Rs.4,000 per Kanal
(b) Banjar Kadim	Rs.2,000 per Kanal
(c) Gair Mumkin	Rs.1,000 per Kanal

Reference Petition under Section 18 of the Act claiming higher compensation, on various grounds, was filed by several land owners other than the petitioners. In all, six cases were registered separately as Land Reference Petitions No. 22 of 1987, 14 of 1987, 16 of 1987, 24 of 1987, 25 of 1987 and 27 of 1987 and were decided by the District Judge in terms of its award dated 27th May, 1988, who reassessed the value of land, in addition to statutory payment of solatium and interest, as under:-

(a) Barani and Abadi	Rs.8,000 per Kanal
(b) Banjar Kadim	Rs.4,000 per Kanal
(c) Gair Mumkin	Rs.2,000 per Kanal

Petitioners filed applications under Section 28-A of the Act claiming enhanced compensation on the basis of award dated 27th May, 1988 as passed in Reference Petition No. 22 of 1987. Based on the enhanced awarded amount, petitioners said applications were allowed whereby they were also awarded enhanced compensation in terms of the award.

However, against the award dated 27th May, 1988 appeals were filed before this Court, which were decided vide judgment dated 16th May, 1997 whereby the said award dated 27th May, 1988 was set aside and the matter was remanded back to the District Judge for reconsideration. After remand the Reference Petitions were separately decided by the District Judge on different dates. The last of the award dated 1.8.1998, arising out of the same Notification, was passed by the District Judge in Land Reference No. 82 of 1987 titled Lachhman Dass. Vs. Collector. In terms of the said award dated 1st August, 1998, the land rates were enhanced by the learned District Judge as under:-

(a) Barani	Rs.10,000 per Kanal
(b) Banjar Kadim	Rs. 5,000 per Kanal
(c) Gair Mumkin khud and choe	Rs. 2,500 per Kanal

Resultantly, the petitioners herein relying upon the aforesaid award dated 1st August, 1998, being later in time, also moved fresh applications before the Collector, under Section 28-A of the Act for re-determination of compensation on the basis of the enhanced compensation awarded by the Court afresh. Petitioners' applications, after due consideration were dismissed by the Collector in terms of impugned orders dated 22nd March, 2003 primarily on the ground that the second application is not maintainable in view of the fact that in an earlier application, the amount claimed already stood re-determined and enhanced. Consequently, present writ petitions have been filed.

Learned counsel for the petitioners Mr.R.P.Singh, has contended that there is error apparent on the face of record inasmuch as Collector has erred in wrongly recording that the petitioners had suppressed the information of having earlier receiving the compensation under Section 28-A of the Act and further that the second application is not maintainable in law.

Per contra, Mr. Anand Sharma, learned counsel for respondents No.2 and 3, the main contesting respondents, have supported the impugned order to contend that in view of ratio of law laid down in *Union of India and another* v. *Hansoli Devi and others,* reported in (2002) 7 SCC 273, second application is barred in law. Therefore, the Collector was right in arriving to the decision rejecting the petitioners' second application under Section 28-A of the Act.

For the sake of ready reference, the provisions of Section 28-A of the Act are reproduced as under:-

> "28-A. Re-determination of the amount of compensation on the basis of the award of the Court. (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:
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> Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

(Emphasis supplied)

The Apex Court in *Babua Ram and others vs. State of U.P., reported in (1995) 2 SCC 689*, has considered in extenso the statement of objects and reasons for introducing the bill enacting Section 28-A of the Act. The Court held that Section 28-A is a complete code in itself, providing substantive right to interested owner who has received compensation under Section 18 without protest for higher compensation.

Under the Act, the Court has been defined in Section 3(d) to mean principal civil court of original jurisdiction within specified local limits to perform the functions of the court under the Act. The civil court will follow the procedure prescribed in Part III of the Act and the Code of Civil Procedure in determining the compensation as envisaged under Section 23 of the Act and determine the market value of the lands acquired and award the compensation in terms of the provisions of the Act. By operation of Section 25 the amount of compensation to be awarded by the court shall not be less than the amount awarded by the Collector under Section 11. Under Section 26, the civil court shall make its award as enjoined in sub-section (1) and the same is a decree under sub-section (2) thereof.

The Apex Court has further held as under:-

"18. The person aggrieved must, therefore, be one who has suffered a legal grievance because of a decision pronounced by civil court giving higher compensation for the acquired lands similar to his own while he is denied of such higher compensation for his land because of operation of Section 18 read with Section 31 of the Act resulting in affectation of his pecuniary interest in his acquired land directly and adversely by that award of the Collector made under Section 11. As such he becomes an aggrieved person entitled to avail of the right and remedy conferred upon him under Section 28-A (1) to make good his denied right to receive compensation in excess of the amount awarded by the Collector/LAO. Acceptance of the contentionof Shri G.L.Sanghi, learned senior counsel and his companions, that persons who under protest received payment of compensation for their lands but failed to avail of the right and remedy under Section 18 waiting in the wings for success of the landowners of the adjoining lands to get higher compensation under Section 28-A(1) as person aggrieved robs the poor and inarticulate who by reason of their poverty or ignorance failed to avail of the right and remedy under Section 18, and creates not only invidious discrimination between same class of persons similarly situated but would be highly unjust and arbitrary offending Article 14 of the Constitution, apart from flying in the face of express animation of the statute as espoused in its Statement of Objects and Reasons and the Financial Memorandum. In this context, we make it clear that we have looked into Statement of Objects and Reasons and the Financial Memorandum to know what is it that induced the introduction of the Bill but not as an aid to interpret Section 28-A(1). Therefore, we have no hesitation to hold that any interested person in the land acquired under the same notification published under Section 4(1) who failed to avail the right and remedy under Section 18(1) read with second proviso to Section 31(2), becomes a person aggrieved under Section 28-A(1) of the Act when the owner of the other land covered by the

same notification is awarded higher compensation by the civil court on a reference got made by him under Section 18."

"39. The next question is whether the Collector/LAO on receipt of the application under sub-section (1) of Section 28-A is bound to redetermine the compensation while the award and decree under Section 26 is pending consideration in the appeal in the High Court or appellate forum. If he does so, whether award under Section 28-A(2) is illegal? It is settled law that the decree of the trial court gets merged in the decree of the appellate court which alone is executable. The finality of the determination of the compensation is attained with the decree of the appellate forum, be it the High Court or this Court. Take for instance that 'A', 'B' and 'C' are interested persons in the land notified under Section 4(1) and the compensation determined in the award under Section 11. "A" received the compensation without protest. 'B' and 'C' received the compensation under Section 31 under protest and sought and secured reference under Section 18. The court enhanced the compensation from the Collector's award of Rs.10,000 to Rs.20,000. 'B' did not file appeal under Section 54 while 'C' filed the appeal. The High Court, suppose, further enhances the compensation to Rs.25,000 or reduces the compensation to Rs.15,000 per acre. "A" is a person aggrieved only to the extent of the excess amount awarded either by the award and decree of the court under Section 26 but he will not get the enhancement of further sum of Rs.5000 granted by the High Court in favour of "C'. The decree of the High Court is the executable decree made in favour of 'C'. Unless redetermination is kept back till the appeal by the High Court is disposed of, incongruity would emerge. Suppose the State filed appeal in this Court under Article 136 against the High Court decree and this Court confirms the award of the Collector and sets aside the decree of civil court under Section 26 and of the High Court under Section 54. There is nothing left for redetermination. With a view to save 'A' or 'B' or the State from the consequences of such incongruous situations, the Collector/LAO should stay his

> hands in the matter of redetermination of compensation till the appeal is finally disposed of and he should redetermine the compensation only on the basis of the final judgment and decree of the appellate forum. Adoption of such course, would not merely avoid the chance element in the claimants getting the amounts of redetermined compensation but also avoids needless burden on public exchequer. As soon as the award of the civil court is carried in appeal, it becomes obligatory for the Collector to keep the application/ applications for redetermination of compensation filed within limitation pending, awaiting decision by the appellate forum and to redetermine the compensation on the basis of the final judgment and decree. Normally the LAO would file the appeal against the enhanced compensation in a decree of either the civil court or the High Court and will know their pendency. In the case of appeal filed by the interested persons, the latter should inform the Collector/LAO of the pendency of appeal or otherwise comes to know of it should keep the applications for redetermination, received under sub-section (1) of Section 28-A within limitation pending, awaiting the decision by the appellate court. Before proceeding with the determination, he should obtain an affidavit from the party making the application under Section 28-A that no appeal against the award made under Section 26 relied upon by him was filed or if had been filed was disposed of by the appellate court and to produce the certified copy of decree and judgment, if already disposed of."
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> (Emphasis supplied)

Babua Ram (*supra*) came up for consideration before the Apex Court again in *Union of India and another vs. Pradeep Kumari and others,* reported in (1995) 2 SCC 736. The Court held that no restrictive meaning should be given to the provisions of Section 28-A of the Act and held as under:-

> "10 ...The object underlying Section 28-A would be better achieved by giving the expression 'an award' in Section 28-A its natural meaning as meaning the award that is made by the court in Part III of the Act after the coming into force of Section 28-A.

If the said expression in Section 28-A(1) is thus construed, a person would be able to seek redetermination of the amount of compensation payable to him provided the following conditions are satisfied:

(i) An award has been made by the court under Part III after the coming into force of Section 28-A;

(ii) By the said award the amount of compensation in excess of the amount awarded by the Collector under Section 11 has been allowed to the applicant in that reference;

(iii) The person moving the application under Section 28-A is interested in other land covered by the same notification under Section 4(1) to which the said award relates;

(iv) The person moving the application did not make an application to the Collector under Section 18;

(v) The application is moved within three months from the date of the award on the basis of which the redetermination of amount of compensation is sought; and

(vi) Only one application can be moved under Section 28-A for redetermination of compensation by an applicant."

"11. Since the cause of action for moving the application for redetermination of compensation under Section 28-A arises from the award on the basis of which redetermination of compensation is sought, the principle that 'once the limitation beings to run, it runs in its full course until its running is interdicted by an order of the court' can have no application because the limitation for moving the application under Section 28-A will begin to run only from the date of the award on the basis of which redetermination of compensation is sought."

The aforesaid principles were reiterated in *Hansoli Devi (supra).*

Learned counsel for the respondents has relied upon the aforesaid observation of the Court to contend that only one application can be moved by an applicant under Section 28-A of the Act for redetermination of compensation.

Perusal of the *Babua Ram* and *Pradeep Kumari* (*supra)* would indicate that the issue before the Court was as to when and at what point in time the limitation for moving an application under Section 28-A of the Act would begin. It was in this context that the Court held that a person can exercise his right and move an application under Section 28-A after the award covering the same acquisition proceedings has been passed.

In *Union of India and another vs. Pardeep Kumari and others,* reported in (1995) 2 SCC 736, it has been reiterated that the object underlying the enactment of Section 28-A is to remove inequality in the payment of compensation for same or similar quality of land arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the civil court under Section 18 of the Act. This is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same notification, to seek redetermination once any of them has obtained orders for payment of higher compensation from the reference court under Section 18 of the Act. Section 28-A is, therefore, in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor people who are not able to take advantage of right of reference to the civil court under Section 18 of the Act.

The Apex court in *State of Tripura and another vs. Roop Chand Das and others*, reported in (2003) 1 SCC 421, after considering the *Pardeep Kumari* (supra), has held that the object underlying Section 28-A would be better served and achieved by giving the words ‘an award’ in Section 28-A their natural meaning, as meaning any one of the award(s) made by the court under

Part III after the coming into force of Section 28-A. The Court further held that the provisions leave the choice to the person making such an application for redetermination, without confining or restricting the area of choice of such person though the same could be availed of only once and not as many number of times as there are so many awards.

The provisions of Section 28-A itself make it clear that the Collector is required to make an inquiry where there is an award under Part III, wherein the Court has allowed the applicant under Section 18, compensation in excess of the amount awarded by the Collector.

The Act also stipulates that from an award, which is a decree within the meaning of Section 2 clauses (2) and (9) of the Code of Civil Procedure, an appeal lies to the High Court under Section 54. Now in the present case, the period of limitation has to be computed from the date of the Court's award under Section 18 on the basis whereof redetermination is sought.

The Apex Court in *Gurpreet Singh vs. Union of India*, reported in (2006) 8 SCC 457, has held that when a Reference Court or appellate Court awards enhanced compensation, the operative award is that of the Court that awards the enhanced compensation and going by the doctrine of merger, the operative decree is that of the appellate court. Thus, the award of the ultimate court, in the given case, would be the amount payable for acquisition.

In *Union of India vs. Munshi Ram (dead) by LRs. and others,* (2006) 4 SCC 538, the Court has held as under:-

> "7. We are of the view that the Union of India is right in its submission that the amount payable under Section 28-A of the Act is the amount which is finally payable by way of compensation to the owners of the land who challenged the award of the Collector and claimed reference under Section 18 of the Act. The said provision seeks to confer the benefit of enhanced compensation even on those owners who did not seek a reference

> under Section 18. It cannot be that those who secure a certain benefit by reason of others getting such benefit should retain that benefit, even though the others on the basis of whose claim compensation was enhanced are deprived of the enhanced compensation to an extent. This would be rather inequitable and unfair. Moreover, even if it be that the compensation payable to claimants who have applied under Section 28-A of the Act, is the enhanced compensation decreed by the Reference Court, we must understand the decree to mean the decree of the Reference Court as modified in appeal by the higher Courts. Otherwise, an incongruous position may emerge that a person who did not challenge the award of the Collector and did not claim a reference under Section 18 of the Act would get a higher compensation than one who challenged the award of the Collector and claimed a reference, but in whose case a higher compensation determined by the Reference Court was subsequently reduced by the superior court. There can be no dispute that those claiming higher compensation and claiming reference under Section 18 of the Act are bound by the decree as modified by the superior court in appeal. The principle of restitution must apply to them. For the same reason, the same consequence must visit others who have been given the benefit of enhanced compensation pursuant to the decree passed in reference proceeding on the application of others."
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> (Emphasis supplied)

In view of the aforesaid principles of law laid down by the Court, the question for determination is as to whether petitioners would be disentitled to move fresh applications in view of their earlier applications.

This Court in terms of its order dated 16.5.1997 remanded the matters back for redetermination after setting aside the award dated 27th May, 1988. Therefore, the said award and decree being set aside, it was open for the petitioners to have moved applications under Section 28-A of the Act for determination of a fair compensation in accordance with the award, so

determined after remand. The language of Section 28-A itself is clear. The person aggrieved by the award can move an application within 3 months from the date of the award of the Court requiring re-determination of the amount payable on the basis of the amount of compensation awarded by the Court.

Whether the Collector on receipt of the application is bound to determine the compensation while the award under Section 26 is pending consideration in appeal in the High Court is a question which stands answered by the Apex Court in *Babua Ram (supra*), wherein it was categorically held that the decree of a trial Court gets merged in the decree of appellate Court, which alone is executable. The finality of the determination of the compensation is attained with the decree of the appellate forum. In order to avoid incongruous situation, the Collector should have stayed his hands in the matter of redetermination of compensation till the final disposal of the appeal and should have redetermined the compensation only on the basis of the final judgment and decree of the appellate forum.

Now in the present petitions, the Collector, ought not to have decided the matter pending the challenge of the award dated 27th May, 1988 before this Court. Therefore, respondents cannot take any advantage of the observation of the Apex Court to contend that petitioners were entitled to move applications only once and their subsequent applications were barred. As has been seen aforesaid what was observed by the Apex Court was in the context where the award had attained finality and, therefore, the applications could not take advantage by moving subsequent applications on the passing of different awards pertaining to the same acquisition proceedings.

The Apex Court while considering *Babua Ram* (supra) in *Pradeep Kumari* (supra) held that they were unable to agree with the view expressed in *Babua Ram* that the application under Section 28-A for re-determination of

compensation can be made on the basis of the first award that is made after coming into force of Section 28-A. The Court clarified that the benefit of re-determination of amount of compensation, under Section 28-A, can be availed of on the basis of any one of the awards, made by the Court provided the application is within the period of limitation. The observation of the Court that only one application can be moved under Section 28-A for re-determination of compensation by an applicant is based on the fact situation which the Court had itself observed. The Court observed that there can be a case where with respect to the same Section 4 notification large tracks of land, falling in different villages may be acquired. An aggrieved person having come to know of the award passed by the Court may move an application under Section 28-A but this would not preclude another aggrieved person to move a similar application with respect to a subsequent award passed by the Court covering the land under the same notification. The Scheme of the Government itself envisages that where there is a single notification, there can be multiple awards either that of the Collector or Court as envisaged under Sections 11 and 18 of the Act. Keeping in view the limitation provided under Section 28-A, the person would have a choice to exercise his right at any point of time starting from the first till the last of the awards made by the Court. This right of choice, however, can be exercised only once and not every time the Court passes an award under Section 18. The Scheme of the Act does not envisage moving of multiple applications. In view of the object and the Scheme of the Act, aggrieved person should get a fair reasonable compensation. Therefore, it was in this background that in *Pradeep Kumari* it was so held that only one application can be filed by the person aggrieved.

Unlike situation in *Babua Ram (supra)* and *Pradeep Kumari (supra)*, here in the present case the award on the basis of which re-

determination was sought under Section 28-A itself was set aside by the High Court and on remand a fresh award was passed by the Collector under Section 18. The purpose of Section 28-A is to give a fair compensation to the person aggrieved and not deprive him of the amount adjudicated and determined by the Court under Section 18. Keeping in view this object, in my view, the petitioners cannot be deprived of the payment of compensation based on fresh determination by the District Judge under Section 18 of the Act. It is undisputed fact that the lands, in question, are covered by the same notification issued under Section 4 of the Act. Petitioners are admittedly agriculturists and do not have any other source of income. They have been deprived of their valuable land and livelihood and I see no reason as to why they should be deprived of the fair compensation which the similarly situated persons have received in accordance with law. The fresh award by the District Judge, it is stated at the Bar, has now attained finality.

In the present petitions as is evident from the facts given hereinabove, the petitioners' land amongst others were sought to be acquired in terms of Notification dated 20th October, 1984 under Section 4 of the Act. The Collector's award is also similar. Therefore, it cannot be held that petitioners subsequent applications are barred and the petitioners are not entitled to make any application.

For all the aforesaid reasons, all the writ petitions are allowed. Petitioners' applications under Section 28-A of the Act are restored and it is directed that the same be decided very expeditiously, in accordance with law. Each of the petitioners shall also be entitled to costs quantified at Rs.5000/-. Misc. applications, if any, are also disposed of.

31st July, 2007. **(Sanjay Karol)**
(C) **Judge.**